

Application No. 09/557,196
Amendment "C" dated July 22, 2004
Reply to Office Action mailed May 5, 2004

REMARKS

The latest Office Action mailed May 5, 2004, considered claims 1-17. Claims 1-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kurtz (U.S. Patent No. 5,574,440), in view of Houser (U.S. Patent No. 5,774,859), and further in view of Brooks (U.S. Patent No. 5,826,166)¹.

By this paper, claims 1, 5 and 8 have been amended and new claims 18 and 19 have been added, such that claims 1-19 remain pending for reconsideration, of which claims 1, 5 and 8 are the independent claims at issue.

Claim 1 is directed to a method for using a central management device to tune to channels that are requested by a user for display on a display device. The method includes receiving user input at the central device selecting a channel to be tuned to. It is then determined, from the electronic programming guide data stored at the central device, whether the signal is scrambled or not. If the signal is scrambled, it is routed from the central device to a descrambler where it is descrambled and tuned for display. If the signal is not scrambled, a tuner internal to the central device is used to tune the channel for display.

Claim 5 is directed to a corresponding computer program product for implementing the method of claim 1. Claim 8 is directed to a correspondingly similar apparatus for implementing the method of claim 1.

In the last action, the Examiner argues that Kurtz teaches a method that includes "determining at the central device whether the signal is scrambled or non-scrambled." Page 3. Even though Applicant disagrees with this point, for the reasons provided below, it is irrelevant insofar as this is not what is required by the claims. In particular, the considered claims required "determining from electronic programming guide data stored at the central device whether the signal is scrambled or non-scrambled." (emphasis added). Accordingly, it would not be enough for Kurtz to merely teach that a central device determines whether a signal is scrambled or not, unless this determination was performed with electronic programming guide data. To even

¹ Although the prior art status of the cited art is not being challenged at this time, Applicants reserve the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

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clarify this distinction even more, the independent claims have been amended by this paper to more clearly recite the requirement of "using the electronic programming guide data stored at the central device to determine whether the signal is scrambled or non-scrambled."

The Examiner also asserted that Houser discloses EPG data stored at a central device and that the combination of this teaching with Kurtz would obviate the aforementioned claim limitation. This, however, is not the case. The cited disclosure of Houser merely mentions that EPG data can be received and clarifies how it can be transmitted to the user (by a scrambler through the vertical blanking interval, for example). This disclosure and the cited disclosure in Kurtz provide no suggestion or motivation for determining whether a signal is scrambled using EPG data. In fact, it is unclear why the Houser reference is even being cited at all, inasmuch as the use of EPG in Houser corresponds to the use of an EPG with voice activated commands. (Abstract; Technical Field; Summary; Col. 22, ll. 48-67; Col. 23, ln. 51 thru Col. 24, ln. 13).²

With further regard to this limitation, Applicants also continue to assert that Kurtz fails to teach or suggest the underlying concept of even determining whether a signal is scrambled or not. Yes, it is true that the Kurtz switching device has LEDs to reflect whether a signal is a premium (scrambled) signal or a non-premium (non-scrambled) signal. This, however, does not show that Kurtz teaches the limitation of determining whether a signal is scrambled or not. It merely suggests that the switching device is capable of reflecting to the user which of two known signal sources (A) or (B) are being routed to the user. In fact, Kurtz does not even address the determination of whether a signal is scrambled or not because it is already known based on which input is being received into the switching device (see Figure 1, and the connectors 22, 23, and 25). In other words, the LEDs taught in Kurtz merely identify which of known scrambled and non-scrambled signals are being routed to the TV/VCR. They do not teach a method for actually determining whether a signal is scrambled or not.

As mentioned above, the reason Kurtz utilizes the LEDs is to reflect to the user which signal source is being received so that the user can knowingly control whether they are willing to restrict the capabilities of the TV/VCR, based on the signal source. (see the Summary, Col. 3, ln.

² It appears that the Examiner performed a search using the terms "Electronic Program Guide" and "scramble", terms that are used in the present claims, and discovered Houser references both terms in the same paragraph. However, upon reviewing Houser it is clear that Houser provides no motivation or suggestion for using the Electronic Program Guide to determine whether a signal is scrambled or not, even when combined with Kurtz.

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40 thru Col. 4, ln. 12). In particular, Kurtz teaches that the LEDs are illuminated to reflect which input signal is being transmitted from the switch, so as to indicate to the users whether they have the "freedom to utilize the inherent features" of the TV and VCR. Such freedom is determined where the input is received from, not whether the signal is scrambled or not.³ Accordingly, it would do no good for Kurtz to actually determine whether a signal is scrambled or not, it merely needs to indicate to the user which input signal is being routed to the user, so the user knows whether they have freedom to utilize the functionality of the TV and VCR.

Nevertheless, even if Kurtz did imply some sort of determination as to whether a signal was scrambled or not, Kurtz clearly does not teach the use of EPG data to make such a determination. In fact, if Kurtz could already determine whether a signal is scrambled or not, without EPG data, as the Examiner suggests, there would be no reason to store and use the EPG data at the device to make such a determination because this extra storage of EPG data and corresponding processing would be unnecessary and would represent wasted resources. In summary, there would be no motivation for Kurtz to use EPG data to determine whether a signal was scrambled if it could already do it without the EPG data. Furthermore, even if there was a motivation for Kurtz to use EPG data, which there isn't, Houser fails to teach or suggest the use of EPG data to determine whether a signal is scrambled or not. Accordingly, the combination of Kurtz and Houser fail to anticipate or obviate the claimed invention.

As a final note regarding this limitation, Applicants point out that it would not be enough for a reference to merely teach a device that determines whether a signal is scrambled or not and for a reference to teach that EPG data can be stored. What the claim limitation clearly requires is using the EPG data to determine whether the signal is scrambled or not.

With reference now drawn to the new claims 18 and 19, the recited method also requires that upon determining that a signal is scrambled or not, that the device automatically tunes and routes the signal, as appropriate. These new claims further distinguish the invention from the cited art, in which Kurtz and Houser clearly do not automatically tune to a signal with a central tuner if it determined that the signal is non-scrambled for at least the reasons provided below with regard to Brooks.

³ The entire background section is helpful to clarify this point. See also Col. 3, ln. 67-Col. 4, ln. 12. ("To aid the user in being cognizant of the source status then present for either or both the television receiver or the video recorder, visual indicators of that status are provided with the apparatus....")

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The Examiner cites Brooks for the proposition that tuning can occur at a centralized device. In particular, the Examiner suggests that a NIM (network interface module) can provide such tuning. The NIM is described in Brooks as providing an interface between a network and a DIT (digital entertainment terminal). (Col. 7, ll. 33-38). Although the NIM can be configured with a tuner (Fig. 5, 43-45), to tune to channels, there is no motivation to combine the teachings of Brooks with Kurtz. In particular, Kurtz is directed to switching a signal output from between two inputs. There is nothing in Kurtz or Brooks, however, to provide any motivation for tuning to channels at the switch, rather than merely routing them to a TV and VCR. In fact, to the contrary, Kurtz implies the opposite, teaching that one desired attribute of the invention is to "utilize the inherent features which may be provided with the recorder or receiver." (Col. 4, ll. 8-10). This point was made in the last amendment, but was not addressed. To further emphasize this point, Applicant points to the background of Kurtz in which Kurtz identifies a problem with previous systems is that the converter box performs the tuning. (Col. 1, ll. 65-68 and Col. 2, ll. 28-29).

Applicant also suggests that the new dependent claims 15-17 further clarify and distinguish the invention from the cited art. In particular, these new dependent claims clarify that the input over which both the scrambled and non-scrambled signals are received is the same input. This feature, which is supported by Figures 4-8 and corresponding disclosure, even further distinguishes from at least the Kurtz reference. With regard to these claims, the Examiner has suggested that Kurtz teaches that connector 23, labeled "TO CABLE" provides both the premium and non-premium programming. Applicant, however, respectfully disagrees. In Col. 3, ll. 50-56, Kurtz identifies one environment in which the apparatus can be used, namely, a system in which a "cable signal pass[es] through a cable converter box and which provides both premium and non premium programming. In this system the integral two-way splitter is used to "establish one source as a non-premium channel input and a second source as the output of the converter box." As shown and described in reference to Figure 1, the second source is supplied over connector 25.


Accordingly, for at least the forgoing reasons, Applicants respectfully submit that the pending claims are in condition for prompt allowance over the art of record.

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In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 22 day of July 2004.

Respectfully submitted,



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